HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.16195 of 1997

22-02-2007

Between:

Smt. Kalindi Satyavathamma .. Petitioner

and

1. The Mandal Revenue Officer,
   Chintalapudi Mandal,
   West Godavari District and 3 others.

ORDER:

This writ petition is filed seeking a mandamus to declare the proceedings dated 08-09-1996 of the 3rd respondent-Special Cadre Deputy Registrar, District Cooperative Central Bank Limited, Eluru, and the sale of petitioner's land to the 4th respondent as arbitrary and illegal, and consequently direct the 1st respondent Mandal Revenue Officer, Chintalapudi Mandal, West Godavari District to pass appropriate orders in accordance with Section 4 of the A.P. Assigned Lands (Prohibition of Alienation) Act, 1977.

2. The brief facts of the case are that the petitioner is a land-less poor person and she was assigned an extent of Ac.4.54 cents of land situated in Survey No.184/1 of Chintampalli village by the then Tahsildar, Chintalapudi, vide proceedings No.Rc.LD.45/94, dated 26-08-1994. Accordingly, 'D' Form Patta was issued to her. As per the terms of 'D' Form Patta read with A.P. Assigned Lands Prohibition of Transfers Act, 1977 (Act IX of 1977), the land is not alienable and cannot be sold to any one. The petitioner availed a loan from the 2nd respondent-Seetharam Primary Agricultural Co-operative Society, Seethanagaram, Chintalapudi Mandal, West Godavari District and with the proceeds of the loan, she reclaimed the land and brought the same into cultivation. Subsequently, the petitioner came to know that the 4th respondent purchased her land from the 2nd respondent-Society vide auction proceedings No.C.B.C.E.P.No.617/96-97,

dated 08-09-1996 of the 3rd respondent. Immediately she approached the 1st respondent and applied for a copy of the auction proceedings and requested him to resume the land in accordance with Section 4 of the Act, but the 1st respondent refused to receive her representation stating that he cannot interfere with the proceedings of the 2nd and 3rd respondents. Hence, the present Writ Petition.

3. The main contention of the learned counsel for the petitioner is that the land in question is an assigned land and though the petitioner can hypothecate or mortgage it in favour of the 2nd respondent-Society and obtained a loan for the purpose of developmental activities, and if, for any reason, the loan amount is not repaid, the Society has no right whatsoever to put the land for sale. In this context, the learned counsel has drawn my attention to the conditions of the 'D' Form Patta.

4. In spite of the fact that this Court, while ordering Rule Nisi directed the respondents to file the counter-affidavit, the official respondents have not filed their counter-affidavit. The 4th respondent has put in his appearance and has contended that he is the auction purchaser and the sale is confirmed.

5. In this context, it is necessary to refer to Section 3 of the Act IX of 1977, which deals with the prohibition of transfer of assigned lands.

"Section 3. Prohibition of transfer of assigned lands:-

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have

been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provision of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The Provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a hosue-site on the date of such commencement."

6. From the above provision of law, it is clear that when there is an assignment of Government land to a landless poor person, he shall not alienate it and even if there is an alienation, the person to whom the same is transferred will not get any title over the land. In fact, the conditions amply make it clear that the land assigned in favour of the petitioner or any assignee is only heritable but not alienable. In fact, one of the conditions of the D-Form Patta is to the effect that the land can be alienated to any public institution for the purpose of developing it. But, no-where it is stated that when there is default in payment of the loan amount, the said institution gets right over the land.

7. In the light of the above provision of law coupled with the conditions imposed in the D-Form Patta, this Court is of the view that the sale made by the 2nd respondent-Society in favour of the

4th respondent is hit by Section 3 of the Act IX of 1977 and accordingly, the said sale is hereby set aside.

8. In the result, the Writ Petition is allowed. No costs.

_____

February 22, 2007

Kvr